

REMARKS

The Office Action addresses claims 2-6, 8-13, 15-39 and 41-47. The claims stand rejected under 35 USC §102 and §103, and are provisionally rejected on the ground of non-statutory obviousness-type double patenting. In light of the following remarks, withdrawal of the rejections and reconsideration of the claims are respectfully solicited.

Response to the double patenting rejection is respectfully deferred until such time as the rejection is no longer provisional, or the claims are otherwise determined to be allowable.

Claims 2, 4-13, 15-26, 30-33, 36, 38-41 and 43-47 stand rejected under 35 USC §102(b) as being anticipated by Yamada et al. This rejection is respectfully traversed.

Yamada et al. discloses a collapsible measuring container formed by folding a shape-retaining paper sheet in a substantially W-shape and joining opposite edges of the inner surface thereof. A sidewall of the container is provided with a see-through window. The Yamada et al. does not disclose that the container comprises a withdrawal opening with bent opening edge, as required by claims 45-47. Further, Yamada et al. does not disclose that the container and the material are dimensionally stable after being formed and are dimensionally stable and fluid tight from -50°C to +120°C, as required by claims 45-57. Only a side edge is folded and adhered to an opposing side edge to form the container.

The Office Action states: "The container is dimensionally stable and fluid tight from -50°C to +120°C, since the container is formed from a laminated film of stretched polypropylene and polyethylene, which are dimensionally stable and would be fluid tight based on their heat seal from -50°C to +120°C." However, referring to column 5, lines 26-30 of Yamada et al. '587, the container, when filled with a large quantity of content may be laterally expanded under weight of the content. To overcome this problem Yamada et al. '587 provides a shape-retainer 14. This appears to indicate that

the container disclosed by Yamada et al. is not dimensionally stable after having been shaped, as required by claim 45, claim 46 and claim 47. Thus, there is no disclosure by Yamada et al. that the container and material are dimensionally stable at all, let alone throughout the temperature range claimed in claims 45-47. Yamada et al. requires the shape-retainer to reinforce the container.

In addressing the Applicant's arguments in support of the amended claims, the Examiner has again ignored the arguments for the claimed temperature range within which the fluid-type material remains stable. The Office Action again cites the Yamada et al. reference as disclosing that the container and material were made dimensionally stable throughout the claimed temperature range. However, again, no citation to this disclosure within the reference is given. In fact, Yamada et al. does not disclose the container being dimensionally stable throughout the claimed temperature range nor being dimensionally stable at any temperature, as discussed above. Further, again as previously argued, Yamada et al. does not disclose the container having a withdrawal opening with a bent opening edge, as claimed by claims 45-47. The folds found in the side walls of the Yamada et al. reference do not constitute a bent opening edge of the container, as required by each of the claims. Functionally, a bent opening edge would also provide dimensional stability, but this is not disclosed by Yamada et al.

Yamada et al. does not disclose each and every element of claim 45, 46 or 47. Therefore, claims 45-47 are not anticipated by Yamada et al. The remaining claims in the application depend, either directly or indirectly, from claim 46 and should be considered patentable therewith. Withdrawal of the rejection and reconsideration of the claims are respectfully requested.

Claim 3 stands rejected under 35 USC §103(a) as being unpatentable over Yamada et al. as applied to claim 40 in view of Matheson et al. U.S. Patent No. 5 078 313. This rejection

is respectfully traversed. Applicant respectfully directs Examiner's attention to the current set of claims filed on March 13, 2008 wherein claim 3, and others, have been amended to depend from claim 46, rather than claim 40.

Matheson et al. '313 discloses wax-coated paper board containers that may have an exterior lacquer coating applied. Matheson et al. '313 does not, however, disclose that the container and the material are dimensionally stable and fluid tight from -50°C to +120°C, as required by claim 46, from which claim 3 depends. As discussed above, Yamada et al. also fails to disclose this element of the claims. Therefore, each and every element of claim 3 is not disclosed by either Yamada et al. or Matheson et al., or the combination thereof. Accordingly, withdrawal of the rejection and reconsideration of claim 3 are respectfully requested.

Claims 27-28 stand rejected under 35 USC §103(a) as being unpatentable over Yamada et al. in view of Benson U.S. Patent No. 1 654 318. Benson discloses a paper drinking cup with a bottom insert. However, Benson does not disclose that the container would be dimensionally stable throughout the claimed temperature range of claim 46. Therefore, neither Yamada et al. nor Benson disclose each and every element of claims 27-28. The claims should therefore be considered patentable thereover. Accordingly, withdrawal of the rejection and reconsideration of claims 27-28 are respectfully requested.

Claim 29 stands reject under 35 USC §103(a) as being unpatentable over Yamada et al. in view of Meyer U.S. Patent No. 2 170 060. This rejection is respectfully traversed.

Meyer discloses a receptacle or box having color effects in a transparent container. However, Meyer does not disclose the container being dimensionally stable throughout the temperature range of claim 46. Neither Meyer nor Yamada et al., as discussed above, disclose each and every element of claim 29. Therefore, claim 29 should be considered patentable thereover. Accordingly, withdrawal of the rejection and reconsideration of claim 29 are respectfully requested.

Claims 34-35 stand rejected under 35 USC §103(a) as being unpatentable over Yamada et al. in view of McLaughlin U.S. Patent No. 6 210 766. This rejection is respectfully traversed.

McLaughlin discloses a holographic decorated tube package. However, McLaughlin does not disclose that the container would be dimensionally stable throughout the temperature range of claim 46, from which claims 34-35 indirectly depend. Therefore, as discussed above, neither Yamada et al. nor McLaughlin, nor the combination thereof, disclose each and every element of the claims. Claims 34-35 should therefore be considered patentable thereover. Accordingly, withdrawal of the rejection and reconsideration of claims 34-35 are respectfully requested.

Claim 37 stands rejected under 35 USC §103(a) as being unpatentable over Yamada et al. in view of Clagett U.S. Patent No. 2 689 424. This rejection is respectfully traversed.

Clagett discloses a dual-indicia container, whereby certain indicia on the container are selectively viewable depending upon the substance contained within the container. However, Clagett does not disclose that the container is dimensionally stable throughout the claimed temperature range as discussed above. Yamada et al. and Clagett therefore do not disclose all of the elements contained in the claim. Claim 37 should therefore be considered patentable thereover. Accordingly, withdrawal of the rejection and reconsideration of the claim are respectfully requested.

Claim 42 stands rejected under 35 USC §103(a) as being unpatentable over Yamada et al. in view of Halligan et al. U.S. Patent No. 4 574 987. This rejection is respectfully traversed.

Halligan et al. discloses a dispenser package for soft-frozen ice cream products, including a cone-shaped body portion comprised of inner and out preformed cone-shaped members. As discussed above, Halligan et al. does not contain those elements of claim 46 deficient in Yamada et al.

Therefore, neither Yamada et al. nor Halligan et al., nor the combination thereof, disclose each and every element of claim 42. Accordingly, withdrawal of the rejection and reconsideration of claim 42 are respectfully requested.

In light of the foregoing remarks, the claims remaining in the application are believed to be in condition for allowance and early notice of allowability is courteously solicited. If necessary to further prosecution of the application, the Examiner is invited to contact the Applicant's representatives listed below.

Respectfully submitted,

  
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